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Rules Of Engagement: Seeking Moral and Legal Sufficiency in the 21st Century

By Tanner Williams

Abstract

Modern conflict in Iraq and Afghanistan has proved to be unlike any other conflict in history. United States and Coalition forces are faced with an insurgent enemy that defies all pre-established Laws of Armed Combat. As we transition from a wartime operations to a peacekeeping environment, it is important to reflect upon the moral and legal struggles that our soldiers face in the line of duty. Certainly, it cannot be easy to distinguish between lawful or unlawful combatants and innocent civilians in a war that lacks a clearly defined enemy. As a result, it is necessary to examine our rules of engagement and our motivations for adherence to them. To do so, one must understand the foundation for United States rules of engagement and their legal applicability in the international arena. Critics would argue that the current situation in Iraq and Afghanistan warrants a new strategy which discounts Laws of Armed Combat in pursuit of success; in other words, justifying our desired ends by their necessary means. Nevertheless, it is pertinent that the United States remain resolute in will, combating our enemies with respect to the ethical and legal guidelines laid out by the international community. In doing so, the virtues of freedom and democracy are better served, both domestically and abroad. In modern conflict involving combat against insurgents and terrorists, the United States' political structure and reputation necessitates adherence to specific rules of engagement that are in agreement with pre-established Laws of Armed Combat. Such adherence may somewhat compromise the safety of Coalition soldiers in Afghanistan and Iraq, but the defense of universal human rights and the foundations of international law is

arguably of the utmost importance if we wish to ensure stability and security within the international system.

June 28, 2005

For the average American this day came and went with little to differentiate it from any other day. Yet for the members of the Special Forces community and Navy SEAL Team 10, it would be a day of unparalleled tragedy and despair. As a part of Operation Redwing in Afghanistan, Michael Murphy, Marcus Luttrell, Danny Dietz and Matthew Axelson set out to seize an important member of the Taliban resistance force. They did not know then that their fate would be tied to a single, controversial strategic decision they soon would be forced to make. As they set up a position to scout the area and capture their target, they stumbled upon two seemingly innocent Afghan goat herders. It was this event that would shape their futures, and for three of the men, cost them their lives.

The men were forced to debate the merits of two specific courses of action. First, they could release the goat herders with the hopes that their mission would not be compromised as a result. Unfortunately, there was no way for these men to differentiate between a Taliban informant and an innocent civilian. Obviously, this option posed a significant and immediate threat to their safety and the outcome of their mission. Second, they could eliminate the Afghans and dispose of the bodies in an effort to maintain their position and ensure the successful completion of their objective. This option presented a

moral dilemma. Was it ethical, and equally important, legal, for these men to execute Afghan civilians who posed no immediate threat? In accordance to their supplied rules of engagement, how was the situation to be handled? At this point, the answer was clear to the members of SEAL Team 10. In their minds, killing the captives seemed to be both immoral and in violation of the international law that dictated their presence in Afghanistan.

The repercussions of this decision proved to be grave. After little more than half an hour, they would find that the same Afghans whose lives they had spared had betrayed them. As a result, more than one hundred heavily armed Taliban soldiers flooded their position and an epic firefight ensued. Meanwhile, a valiant rescue effort was mobilized by a Special Forces helicopter insertion crew and remaining members of SEAL Team 10. Even the danger of a treacherous daylight insertion was not enough to dissuade these men from their sense of responsibility to their brothers-in-arms. The rocket propelled grenade ambush that downed their helicopter minutes later only added to the tragedy. As the sun set on that fateful day, nineteen Special Forces members and over seventy Taliban fighters were dead and one lone SEAL was lost behind enemy lines. In his work *Lone Survivor*, Marcus Luttrell recounts his subsequent journey to safety, which was one of countless miles, improbable luck, and unshakable determination. Such bravery is undeniably inspiring, but it cannot lessen the impact of the tragedy that took place. June 28, 2005 has since been regarded as the deadliest day in American Special Forces history.

The Law of War

With such events in mind, one question seems evident: what role did United States rules of engagement play in the massacre on June 28, 2005? Unfortunately, this question has not proved to be unique to the events of that horrific day. This debate dates as far back as the fifth century with St. Augustine's concept of just war. Since then, this concept has evolved to reflect a number of political and social circumstances. The notion has regained prominence as the result of recent offensive and peacekeeping operations in Somalia, Rwanda, Kosovo, Iraq and Afghanistan. In this light, it is important to understand how these rules of engagement affect soldiers fighting in conflicts across the globe and how they relate to the topics of defense and international security. Furthermore, it is imperative that these principles be evaluated, and possibly changed, to better reflect the realities of modern warfare, specifically in areas such as Iraq and Afghanistan. Even so, this is not a simple topic to address. United States rules of engagement stand as the culmination of thousands of hours of political and strategic efforts and represent the United States' adherence to international law. In this way, rules of engagement offer a sense of legitimacy and morality that might otherwise be obscure or absent in war. Nevertheless, these rules are surrounded by controversy. Arguments exist that claim that such strict regulation in a wartime environment compromises the safety of American soldiers and their ability to effectively combat the enemy. The threat of domestic prosecution often is seen as a shadow that looms over soldiers as they protect and serve their country in far-off battlefields. Others insist that such a notion is a fallacy, and that rules of engagement offer soldiers a comprehensive guide to their duties in a given conflict. Still, the controversy remains. This paper will explore the notion of

effectively altering U.S. rules of engagement as well as the various arguments that complement both realist and idealist perspectives.

To understand better the principles and purposes that support U.S. rules of engagement, it is important to examine their roots. From a strictly legal perspective, rules of engagement are the applicable extension of international law, or more specifically, the Law of Armed Combat (LOAC). Essentially, LOAC is “law regarding acceptable practices while engaged in war... that military personnel must consider to plan and execute operations and must obey in combat.”¹ These laws cover the spectrum of issues from the Geneva Conventions such as torture, the treatment of prisoners of war, and the rules of engagement, which dictate acceptable targeting and action principles. They are the result of years of customary international agreements and humanitarian efforts. The most important concept that drives LOAC is the limiting of collateral damage and casualties as the result of war. Over time, the human race has been victim to increasingly violent and disastrous conflicts that have ended countless lives and destroyed innumerable families and homes. As warfare has increased in destructiveness and efficiency, such law has been increasingly necessary as a method of preservation for societies and cultures plagued by conflict. In the face of modern warfare, this notion has gained increasing acceptance, though it remains difficult to enforce effectively.

Law of Armed Combat is the summation of three essential principles: necessity, proportionality and discrimination. In a simple sense, each element of LOAC must be in

¹ "Law of Armed Conflict (LOAC)." USMilitary.About.com. 2007. 25 Oct. 2007 <<http://usmilitary.about.com>>.

congruence with these principles to be considered legitimate.² Military *necessity* is the first principle of LOAC. In essence, “military forces may only engage in acts necessary to accomplish a legitimate military objective that has been approved through the chain of command.”³ In this way, military action can be considered only as a last resort, and can do only what is necessary to ensure victory. Such considerations exist to deter tendencies to resort to violence as a means of coercion. The notion of military necessity instead promotes diplomacy as a means of action. *Proportionality* is the second principle of LOAC, and correlates strongly to the principle of military necessity. Proportionality dictates, “force must be limited to only that which is required to feasibly secure an objective. Any exercise of force beyond such a margin is considered unlawful.”⁴ This translates into the responsible use of applicable military might; it is lawful only to target objectives that contribute to the military efforts of the enemy. It is unlawful to target the homes of innocent civilians, churches, synagogues, mosques or businesses simply because of their proximity to a legitimate military target. Unfortunately, this is sometimes difficult to ensure given the chaotic nature of war and the unclear distinction of innocence in a war zone. In addition, LOAC includes the notion of *discrimination*. It is most clearly defined as the “discrimination between lawful combatant targets and noncombatant targets such as civilians, civilian property, POWs and wounded personnel who are out of combat.”⁵ This must be done in an effort to engage only valid military targets. Lawful

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

combatants are defined as those who are members of a legitimately recognized force, be it regular or irregular. They are expected to present themselves as combatants, including the presentation of uniforms and insignia, with clear leadership and accountability, and they may be engaged with impunity under the auspice of war. Unlawful combatants, also defined by LOAC, are individuals who participate in hostilities without being authorized by a government. They too may be legally engaged if they are actively involved in hostilities. Noncombatants are defined as those who are legitimately removed from hostilities, though they may be present during conflicts. LOAC clearly dictates that the engagement of noncombatants is a violation with criminal liability. It is with these guidelines in mind that legitimate military action is shaped and made reality. Unfortunately, the legal ambiguity of LOAC becomes evident in most applicable wartime efforts, and can further complicate confusing situations.

Law in the Field

Rules of Engagement (ROE) are considered the most direct and effective extension of LOAC in modern times. These rules are defined as “directives issued by competent military authority which delineate the circumstances and limitations under which an armed force will initiate and/or continue combat engagement with other forces.”⁶ They are legally binding guidelines to which every legitimate soldier is held accountable, and violations are dealt with through the use of court martial and military

⁶ Eberhart, Dave. "Rules of Engagement: Can Our Troops Defend Themselves?" NewsMax.Com. 6 Dec. 2005. 25 Oct. 2007 <www.newsmax.com>.

punishment. These rules are not meant to deter soldiers from legitimate action, but instead to guide them in decision-making on the battlefield. Within the United States Military, these rules are printed on cards to be carried by soldiers as a means of reference.

In many cases, ROE dictate a method of de-escalation of hostilities as opposed to outright lethality. Often, this method is presented as a progression of actions that only resort to violence under extreme circumstances. During the 2003 offensive, American ROE dictated that a soldier must:

- a. SHOUT; verbal warnings to HALT or “QIF” (pronounced “COUGH”)
- b. SHOVE: physically restrain, block access, or detain.
- c. SHOOT: to remove the threat of death/serious bodily injury or to protect designated property.⁷

This progression is in light of the fact that ROE clearly state that as a soldier

You may use force, up to and including deadly force, against hostile actors in self-defense, in defense of your unit and other US Forces or to prevent the theft, damage, or destruction of firearms, ammunition, explosives, or property designated by your Commander as vital to national security. (Rules for Use of Force Reference Card)⁸

These rules are in conjunction with the notion that a soldier should attempt to resolve

⁷ Coalition Forces Rules for Use of Force Reference Card, Iraq (2003)

⁸ Ibid.

conflict on the battlefield through the use of a minimum amount of force. The concept of minimum force is further defined by the following criteria:

If you must fire:

1. Fire only aimed shots. NO WARNING SHOTS.
2. Fire no more rounds than necessary.
3. Fire with due regard for the safety of innocent bystanders.
4. Take reasonable efforts not to destroy property.
5. Stop firing as soon as the situation permits.⁹

Furthermore, soldiers are expected to “not target or strike hospitals, mosques, churches, shrines, schools, museums, national monuments, and any other historical cultural sites, civilian populated areas or buildings UNLESS the enemy is using them for military purposes or if necessary for your self defense.”¹⁰

While these ROE were unique to early U.S. involvement in Iraq, they remain similar to ROE found currently in other conflict areas, and can be considered somewhat representative. Unfortunately for the purposes of this evaluation, the most current Iraq and Afghanistan ROE are unavailable; “rules of engagement are for the most part classified as for ‘limited’ distribution only.”¹¹ This should be seen as an effort to protect soldiers from public misinterpretation and enemy abuse. However, it can be assumed that

⁹ Ibid.

¹⁰ Ibid

¹¹ Eberhart

any current ROE similarly promote the principles of LOAC, and are utilized so as to guide efforts and minimize unnecessary collateral damage.

Understanding Idealism

Considered in its modern context, the discussion of ROE is often a divisive one. Some support ROE based upon theoretical and idealistic principles, while others criticize ROE from a realistic perspective. While both sides present compelling evidence for their arguments, the effectiveness of ROE remains debatable. This debate is one of the central themes in Marcus Luttrell's work, and has gained undeniable prominence as a result of the Iraq War and the War on Terror.

When examining the merits of these perspectives, it is best to start ROE's theoretical justifications. Supporters of ROE and LOAC focus on what they attempt to accomplish, not what they may or may not realistically accomplish. First and foremost, ROE attempt to eliminate collateral damage within a war zone. This is not only a method of saving innocent lives, but also a way of retaining important points of infrastructure that help promote post conflict rebuilding. With the scale of modern conflict, this is indisputably necessary. The rebuilding process has been an integral part of post-war reconciliation since World War I, and remains so today in Iraq and Afghanistan. Less time spent physically rebuilding a war-torn area results in more time and effort applied to the political and social resolution that follows. In addition to this principle, ROE creates a more secure environment for noncombatants. War undeniably affects those who are not

involved, but ROE represent an effort to promote their safety. This is integral in an effort to win the hearts and minds of people affected by war, which has arguably been the Coalition's strategy in Iraq. Ideally, U.S. forces invaded Iraq to dispose a tyrannical dictator and seize possible weapons of mass destruction. ROE were in place to protect those opposed to Saddam Hussein and make evident the benevolent intentions of the United States. Certainly, the effectiveness of this is questionable, but a theoretical intention for such efforts does indeed exist. Obviously, the most basic principle of LOAC and ROE is the preservation of basic human rights. This grants humanitarian legitimacy not only to military operations, but more importantly, to the governments and politicians that sponsor them.

Legality is another important source of legitimacy in modern times. On a theoretical basis, ROE and LOAC provide this legitimacy. They create a system of accountability for the actions of combatants, and a system of justice for criminal liability. The willingness to adhere to a system of international law enhances an image of fairness and responsibility. In light of the controversy surrounding the Guantanamo Bay detention facility and Abu Ghraib prison, it is important that adherence to LOAC and ROE within conflict zones restore the United States' tarnished international image. This also could translate into the acquisition of new allies—especially tribal/civilian organizations currently in Iraq and Afghanistan—to aid with legitimate military objectives, and ultimately achieve some sort of perceived victory. Again, the degree of success garnered in this area is debatable, but public prosecution of violations within the U.S. Armed Forces has provided a certain amount of legitimacy to the system of international law.

Understanding Realism

Supporters of ROE may praise international law and ROE for maintaining accountability within war, but realists often cite that ROE promote a more dangerous environment for legitimate fighting forces, especially in modern times when enemies are most often insurgent forces who blend in with the civilian masses. This sentiment has existed since the Vietnam War, which in many ways mirrors the progression of the war in Iraq. Most directly, in response to ROE in Vietnam, Senator Barry Goldwater said, "I am ashamed of my country for having had people who would have allowed such restrictions to have been placed upon men who were trained to fight, men who were trained to make decisions . . . and men who were risking their lives. . . . I pray . . . such foolish restrictions never be formed again and applied to our troops."¹² In much the same way as in Vietnam, soldiers in Iraq are having immense difficulty differentiating between civilians, informants, and combatants. Critics claim that strict adherence to ROE results in hesitation, which can lead to death in a firefight or battlefield situation. This sentiment is widely shared by members of the Special Forces, who often face far more dangerous and ambiguous situations than the average soldier. Even Navy SEALs must sometimes be hampered by "ROE that are very specific: [they] may not open fire until we are fired upon or have positively identified [their] enemy or have proof of his intentions."¹³ With deadly force considered a last resort, it seems clear that soldiers are being put in severely

¹² Parks, W. H. "Deadly Force is Authorized." *Proceedings Magazine* 127 (2001). *US Naval Institute*. 2 Nov. 2007.

¹³ Luttrell, Marcus. *Lone Survivor*. New York: Little, Brown and Company, 37

compromising positions. Situations in Bosnia that seem to echo such a sentiment have been brought to public attention in recent years. One account claims that a senior enlisted soldier “was awarded a medal for following his ROE and exercising restraint” in light of the fact that two of his men were brutally beaten by Serbs.¹⁴ By all accounts, these men were entitled to the use of force but refused for fear of ROE violations. Some military personnel feel that “these [events] are representative rather than isolated incidents.”¹⁵

Considering the nature of the modern threats faced in Iraq and Afghanistan, U.S. adherence to ROE and LOAC pose a significantly different challenge. In many regards, our adherence to LOAC in the face of enemy disregard of similar standards seems irrational. For the most part, modern insurgent forces in Iraq and Afghanistan do not accept ROE and do not abide by LOAC. Insurgents often disguise themselves as civilians or engage Coalition forces in the company of true non-combatants, such as women and children. By engaging in such forms of asymmetric warfare, these insurgents are fighting as unlawful combatants within these war zones. Critics argue that this status, in conjunction with their outright disregard for LOAC, warrants the intentional disregard of ROE by American troops. “There is no other way to beat a terrorist.” Luttrell claims. “You must fight like him, or he will surely kill you.”¹⁶ Other Military leaders also feel that

¹⁴ Parks

¹⁵ Ibid.

¹⁶ Luttrell, 28

overly restrictive ROEs are a key factor in the loss of confidence by company-grade officers and enlisted soldiers and Marines in their senior leaders and in the exodus of good men and women from the military. Worse, operating under bad ROEs invites mission failure, usually with fatal consequences to men and women who deserve better.¹⁷

Beyond the repercussions of actual ROE related events, it also seems that ROE in general pose a threat to modern fighting forces. Members of the United States Armed Forces

understand that they must obey ROE because they happen to come under the laws of the country which they are sworn to serve. But they represent a danger; they undermine confidence on the battlefield in the fight against world terror. Worse yet, they make soldiers concerned, disheartened, and sometimes hesitant.¹⁸

This stems from misunderstandings most often attributed to public media. Some feel that “the liberal media will joyfully accuse [them] of being murderers or barbarians... for defending themselves too vigorously when they have been placed in harms way by their government.”¹⁹ This problem is only exacerbated by the *feeling* that “in Washington, the human rights of terrorists are often given a high priority.”²⁰ Unfortunately, such a perspective stems from our inability to discern the nuances of

¹⁷ Parks

¹⁸ Luttrell, 38

¹⁹ Luttrell 39

²⁰ Luttrell 37

Middle Eastern culture and the differences between terrorists and civilians. This is essentially where the principle of discrimination fails, especially in modern media. Both soldiers and American civilians are trying to understand the conflicts in Iraq and Afghanistan, and all too often are making conclusions based upon incomplete evidence. Similar to controversy surrounding the Vietnam War, “most generals who manage the war feel that these rules of engagement are understood and fairly well adhered to, which is why, as one general put it, ‘the rare exceptions cause such a stink.’”²¹

Perspectives versus Reality

Obviously, people on both sides of this argument think that they lay claim to the truth. Unfortunately, this muddles the underlying truth of the situation. Military officers could endlessly argue the merits of either perspective, and ultimately will. In stark contrast to Ret. USMC Colonel W. Hays Parks’ realist perspective, some would argue that the reality of ROE in modern combat is not so bleak. For instance, others would claim that soldiers are not “hamstrung or hampered in any way, shape or form by their rules of engagement and don't have to wait until fired upon to take action, as has been reported in some outlets.”²² Likewise, similar arguments assert that “if someone's setting up down the street and preparing to take you under fire or set up a mortar position somewhere where you don't have direct fire upon them, the Marines are able to go ahead

²¹ Kinnard, Douglas. "Vietnam Reconsidered: an Attitudinal Survey of United States Army General Officers." The Public Opinion Quarterly 39 (1976): 445-456. 451).

²² Rhem, Kathleen. "Marines Not Hampered by Rules of Engagement." American Forces Information Service (2004). 3 Nov. 2007 <www.globalsecurity.org>.

and take some limited - as they see fit - offensive action to prevent that.”²³ At this point, the argument tends to regress into inconclusiveness. Each side believes what they want to believe, and will seek out specific evidence to support it. As it stands, there seems to be an abundance of evidence to support either perspective, further complicating the issue.

Distinctions must ultimately be made. To better understand the nature of ROE in modern warfare, one must understand the state of conflict in which we live. All too often, both sides of this argument will assert that our ROE are either fit or unfit for the *wars* we are fighting in the Middle East. Unfortunately, we no longer are fighting a classically defined war in Iraq or Afghanistan. In this sense, both perspectives are guilty of a gross misappropriation of effort. By design, “rules of engagement are mission- and threat-driven policy.”²⁴ It is necessary to understand the distinction between war and peacekeeping, because it is integral to the form of ROE that will arise. ROE evolution must mirror intention, and for the most part has done so admirably in Iraq and Afghanistan. While many understand the restrictiveness of ROE in these areas today and may criticize them as a result, they fail to understand how the ROE have in fact evolved.

Initial

wartime ROE permit United States forces to fire on all identified enemy targets, regardless of whether those targets represent actual, immediate threats. By contrast, during peacetime, peacetime ROE [SROE] permit engagement in individual, unit, or

²³ Ibid.

²⁴ Parks.

national self-defense --- the sole legal ground for international use of force during peacetime.²⁵

Many people don't understand the fluidity of ROE in modern conflicts. Often, they change as objectives change, in an effort to allow the greatest amount of leeway possible. Even so, as we attempt to transition from Coalition oversight to Iraqi democracy, our ROE must evolve to reflect our emphasis on peacekeeping, and more importantly, to promote Iraqi responsibility and autonomy. The same goes for transitional efforts in Afghanistan with the Afghan people.

This understanding is of the utmost importance. Critics will continue to attack the United States for unnecessarily putting its soldiers in harms way, but do so without a complete understanding of the circumstances. Similarly, idealists will undoubtedly tout a higher standard of morality, which can only be realized in a post-war state.

Simply put, "war is war. If you want to win, you have to fight."²⁶ Essentially, wartime ROE cannot successfully promote a peacetime environment, and peacekeeping ROE cannot win a war. The distinction must be made, lest we go on addressing the wrong issues altogether.

Blueprint for Democracy and Peace

²⁵ Rhem, Kathleen. "Marines Not Hampered by Rules of Engagement." American Forces Information Service (2004). 3 Nov. 2007 <www.globalsecurity.org>.

²⁶ [Anonymous], LCDR, USN. Personal interview. 19 Jan. 2008.

While ROE have proven successful in the past, events similar to those chronicled in Luttrell's Lone Survivor have prompted a significant question: What place do ROE have in modern unconventional warfare? The answer is not simple. We can look to the past, and blame stringent ROE for the death of brave Special Forces operators on June 28, 2005, but we must ultimately look at the bigger picture. First, it is important to address the issue of democracy and peace in war torn countries in the Middle East. No matter how unflattering, it is obvious that the United States has made an effort to create democracies in Iraq and Afghanistan and promote peace and international security. This is an undeniably American agenda; nevertheless, it is a step in the right direction.

With that in mind, one might ask how clearly defined peacekeeping ROE in postwar Iraq and Afghanistan would further this cause. Insurgency is an obvious problem and, by most accounts, will not be fading any time soon. Even so, our current peacekeeping ROE in Iraq and Afghanistan, by necessity, reflect a sense of dignity and responsibility inherent in U.S. ideals. Following the use of force, "a recurring challenge [often presents itself] to the military and civilian components of such operations, to [rehabilitate] the forces of law and order. This is an ROE issue because of the military's participation, possibly through the use of force, in supporting the civilian aspects of the operation."²⁷ If we are to prove our commitment to Iraqi and Afghan freedom, we must treat the people of these countries in a way that reflects our commitment to our own domestic security. This means that we cannot do away with ROE. Essentially, we must make every effort to treat insurgents, who are absolutely unlawful combatants in these

²⁷ Bowens, Glenn. "Legal Issues in Peace Operations." Parameters: US Army War College Quarterly (1998): 51-72. 21 Nov. 2007 <<http://carlisle-www.army.mil/>>.

postwar areas, like the criminals that they are. Currently, these insurgents are identified predominantly by observable, threatening actions. Unfortunately, there is no better or more fool proof way to identify a terrorist, so the harsh reality of the situation must be accepted: identifying combatants, lawful or unlawful, remains the weakest link in the legal war-fighting and peacekeeping processes. With that in mind, we must address what should be done with those who *are* identified as combatants. In an effort to promote peacekeeping ROE, we must treat them as we treat criminals in our own country. We must afford them the opportunity to surrender, and utilize lethal force *only* as a last resort. These enemies are becoming little more than outlaws of their own societies as we move toward a democratic future, and thus should be treated as such. Critics must come to terms with the fact that our soldiers are being utilized in a police-like role within these developing states. Their duty is to preserve peace, much like municipal police officers. While it may be questionable to utilize our troops in such a fashion, it must be accepted as reality for the time being. Likewise, we must continue toward the goal of democratization of Iraq and Afghanistan until we are successful, or until we are willing to abandon the enterprise completely.

The issue of international security and action in the Middle East is undeniably important, but it all too often overshadows another equally important issue—the ability of soldiers to cope with what they may be forced to do as a result of war, and all too often, peacekeeping. With increasing frequency, men and women are experiencing post-traumatic stress disorder related to the horrors of war. In the current state of affairs, soldiers are often exposed to a degree of hyper-violence that is incomprehensible to the

average person. Soldiers may witness the brutal killing of civilians or comrades, and may not be equipped to cope with such atrocities. Unfortunately, this is a fact of war. But for some individuals, ROE and LOAC offer a respite from the revulsion they may feel. “If you have rules, it instills a greater sense of morality. We have to do it this way, because that is what America is about.”²⁸ With a strong sense of purpose, men can bear the unbearable and do the undoable. ROE go a long way in instilling such a purpose even if one’s enemy is unwilling to concede to the laws of war. In the end, the issue is not about whether our enemies will extend such privileges to us in our time of need. Ideally, war should be grounded in international law, but as the conflicts in Iraq and Afghanistan have shown us, that is not the case. Instead, it seems better to take the high road, adhering to an elevated moral and ethical standard.

A Change for the Better?

In light of such conclusions, it would be ignorant to claim that our current ROE are perfect. In reality, they represent a noble step in the right direction, which will ultimately benefit from refinement. Most importantly, we must address the issue of clarification, because “superfluous language in rules of engagement has illogically and without legal foundation elevated the concern for civilian casualties above the desire for mission success and aircrew safety.”²⁹ For the most part, ROE were created to be simple, yet comprehensive; nevertheless, a multitude of qualifications exist, each adding to the

²⁸ [Anonymous].

²⁹ Humphries, John. "Operations Law and the Rules of Engagement." *Airpower Journal* (1992). 7 Nov. 2007 <<http://www.airpower.au.af.mil>>.

complication of the overall intention. It seems as though such complexity was unintentional, and in most cases was meant as a means of further clarification. Unfortunately, vast revisions and additions only served to lose sight of the initial goal. Politicians, generals and admirals too far removed from the fighting have ultimately created what has become an incomprehensible beast. Even Special Forces operators have felt the repercussions of overly complicated ROE. “Every SEAL team has a corresponding JAG Officer assigned to investigate ROE violations,” simply because too many legal qualifications exist.”³⁰

The legal disconnect that exists surrounding this issue is one that stands to benefit most from a reshaping of international law and ROE in modern conflicts. Certainly, “A number of modern treaties regulate the conduct of hostilities, with the Geneva Conventions of 1949 providing a legal core.”³¹ Even with that said, legal applicability is not nearly as clear when the circumstances of peacekeeping operations in Iraq and Afghanistan are considered. In all reality, “law-of-war treaties were expressly adopted to regulate the conduct of *interstate* armed conflict... with limited sub-rules regulating civil war.”³² Some might argue that this disconnect legitimizes an abandonment of LOAC and ROE in peacekeeping efforts. In this way, ROE stand simply as American foreign policy, with no tangible basis in international law. In a legal sense,

³⁰ [Anonymous]

³¹ Hoffman.

³² Ibid

there is no treaty that covers (or even imagines) situations where privately organized armed forces cross international borders, stalk international sea lanes, or strike at international aviation for their own ideological or political purposes. Such conduct constitutes private international warfare, a deployment bereft of any legality under the laws of war. (Hoffman)³³

This undoubtedly characterizes modern conflict, especially in the Middle East, and brings to light an unsettling argument: American (and Coalition) forces adhere to LOAC and ROE in conflicts against terrorists and insurgents as a matter of choice, not as a matter of legality. In this light, it seems as though international law requires amendment to clarify such discrepancies. Certainly, one could argue that this is an oversimplification of international law, but the fact remains that no internationally enforceable legislation currently exists to deal with the unique threat and legal ambiguity poised by modern terrorist and insurgent combatants. Until an international enforcement agency can be established for such a purpose, the duty falls to the United States as the sole remaining superpower on earth. Nevertheless, the United States choice to adhere to LOAC and ROE must be continued in an effort to promote the ethics and values the United States wishes to proliferate.

Are overly complex ROE to blame for the tragedy that took place on June 28, 2005, deep within the Afghan mountains? This may partially address the issue, but is by no means a comprehensive answer. Without a doubt, the members of SEAL Team 10 faced a distinct ROE dilemma, and they ultimately paid with their lives. Ideally, “If the

³³ Ibid

ROE are briefed correctly and everyone is trained on how to utilize them correctly, the required 'legally protected' response meshes with that person's training or Standard Operating Procedures" (Anonymous). The discrepancy that surfaced among the members of SEAL Team 10 seems to show how ROE might not sufficiently mesh with given objectives and training. Such a conclusion by no means undermines the immense moral dilemma those men faced, but a relative inapplicability of their specific ROE did play a role in the events that took place, as did the comparative uniqueness of the situation itself.

Nevertheless, one lesson must be learned. To better serve American troops fighting insurgents and terrorists, rules of engagement must be clear and concise, regardless of the strategy that they emphasize. They must also have an *undisputable* foundation in international law, which specifically addresses the nature of a given conflict. Likewise, soldiers must be rigorously trained in their use and have a clear understanding of them before setting foot in combat. As our fighting force becomes more sophisticated, ignorance can no longer be tolerated. In addition, the leadership must take responsibility for making clear the ultimate goal of its efforts and how ROE specifically promote success. Universal ROE are not the answer, because every conflict is unique and requires individual attention. In many ways, this is an adoption of a Special Forces-like mentality, in that each objective or mission requires specific examination and attention to detail. Even so, it is obvious that such a perspective is entirely unrealistic. The average grunt on the ground simply does not have the training or resources to approach each and every event with the professionalism and comprehensiveness of a Navy SEAL, Army Green Beret, or Air Force Combat Controller.

It also seems as though the need for change exists in how public media understand and interpret the actions of our Armed Forces on the modern battlefield and how such action relates to specific ROE. A serious disconnect exists when soldiers fear prosecution from the society which they are acting to defend. The reality is that the average American is not capable of understanding the complexities of war. Because of this, they should not expect to be informed unconditionally on matters of national and international security. There are far too many nuances of international relations that never make the evening news. While not ideal, the fact remains that questionable exceptions are made, though most often with national interests in mind.

Learning from our Mistakes

With such conclusions in mind, what courses of action were realistically available to the men of SEAL Team 10 on the day of June 28, 2005? Legally, it is difficult to discern. The true intentions and specified rules of engagement regarding Operation Redwing will undoubtedly remain classified for years to come. If they were bound to a standard form of United States peacekeeping ROE, then we can reasonably assume that they came to the right conclusion. They respected the human rights of two Afghan goat herders, even to the point of risking their own lives. In a way, their actions furthered the legitimacy of American peacekeeping efforts in Afghanistan beyond what they probably realized. Such abstract success far outweighs any failure that may have occurred on that day. They essentially took responsibility for their country's efforts, and sacrificed

themselves in the name of legality and morality.

American military and strategic policy is not perfect;

modern conventional ground operations will continue to challenge the professional, moral, and legal skills of commanders. Future commanders will have to balance the professional obligations of the mission and its successful accomplishment with the moral obligation to minimize risk to troops under their command. They will also have to balance the objectives and conduct of the mission with their legal obligation to safeguard the surrounding noncombatant population.³⁴

Mistakes have been made in Iraq and Afghanistan, which may have been directly responsible for the loss of a great number of lives, both American and foreign; “however, they certainly can serve as a model for future combat operations insofar as the effective application of rules of engagement is concerned. Years of military education, preparation, exercises, and analysis” have laid the foundation for an effective system of international law.³⁵ Unfortunately, it is currently little more than a foundation. The Law of Armed Combat encompasses the principles necessary to grant legitimacy to a wide range of causes, but nevertheless has been found lacking under modern circumstances. As a result, there is no universal solution to our issues of international security, and more specifically, military policy abroad. Our rules of engagement represent a legitimate *effort* to promote the notion of human rights on a global scale, but there are obvious challenges ahead.

³⁴ Butler,

³⁵ Humphries.

These lie mostly with enemies that embody a disregard for human life, namely Islamic Radicals. That is not to say that our problems would cease in their absence. History has proved to be cyclical, often unearthing conflicts long thought buried. With this in mind, it is inevitable that another enemy will rise up if the turmoil in the Middle East is ever brought to an end. Because of this, it is best that we make a genuine effort to spread the principles of life and peace wherever they are lacking. If the use of force is necessary to promote peace, then so be it; but at least a system will be in place that upholds a sense of liability and morality, however imperfect it may be. Most importantly, we must understand that “prosecuting war legally while at the same time treating [enemy] soldiers and civilians humanely is essential to maintaining domestic and international public support” and ensuring the future of domestic and international security.³⁶

³⁶ Humphries.